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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 436th AIR BASE GROUP (MAC)
DOVER AIR FORCE BASE, DELAWARE 19901

23 February 1979

DEPARTMENT OF STATE A/CDC/MR
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MEMORANDUM FOR: Major Giovagnoni

RE: Impact of Court Plan on Mortuary Contract

1. Reference: The Recommended Plan of the Emergency Relief Committee (ERC) to the Superior Court of the State of California.

2. I have thoroughly reviewed the Ford Mortuary Contract, as changed and modified, and find that court implementation of the Plan recommended by ERC would not breach the contract we have with Mr. Ford.

3. The only area the Plan could involve Ford is in the transportation of the remains. Under the Ford contract we are obligated to order the transportation of remains and/or escort between DAFB and selected common carrier (Item 11 of the Schedule, Section E). Common carrier is not defined therein. However, in the AF Specification which is part of the contract (6.2a), "remains moving by common carrier shall be delivered to the airport or railhead not later than two (2) hours before the scheduled departure of the aircraft or train". No mention is made of common carrier truck transportation, which is the mode of transportation recommended in the Plan (specifically a truck firm in Wilmington, DE, called Larmore Moving Systems Co.). It seems the meaning of "common carrier" in the Ford contract applies only to train or aircraft transportation, or so we could argue.

4. Additionally, Item 12 of Ford's Schedule provides for the transportation of remains between DAFB and any point within 300 miles as called for by the contracting officer. This requirement, however, is subject to Note 1 of the Schedule. Therein, "the Government reserves the right to determine the mode of transportation of remains and escort; therefore, the Government is not obligated to use Item 12 ...." (emphasis added). Furthermore, General Provision 43 (Requirements) of Mr. Ford's contract states, in part, "the Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the contractor shall not be required to provide services in excess of the capacity of his facilities".

5. In my opinion we can exclude Mr. Ford from participating in the disposition of the Guyana remains, without breaching his contract, by reference to any of the three reasons discussed in paragraphs 3 and 4 above.

S. O. LeComte

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Attorney-Adviser